

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID P. DUNNING and TRACY
DUNNING,

Plaintiffs,

v.

CERTAINTIED GYPSUM, INC.,

Defendant.

NO. CV-10-0208-EFS

**ORDER GRANTING STIPULATED
MOTION FOR PROTECTIVE ORDER**

Before the Court, without oral argument, is the parties' Stipulated Motion for Protective Order (ECF No. [11](#)). Based on the stipulation, **IT IS HEREBY ORDERED:** The Stipulated Motion for Protective Order (**ECF No. [11](#)**) is **GRANTED**. The following Protective Order is **HEREBY ENTERED**:

1. Scope and Purpose of this Order: This Protective Order shall govern the designation and handling of protected documents produced by any party in discovery in this litigation, whether by voluntary production or disclosure or in response to any formal discovery procedure, including designation and handling of nonpublic information of a confidential nature. This Protective Order does not affect any party's obligations under the Federal Rules of Civil Procedure, or any Local Rules, to produce documents as required by the rules of discovery or an order of the Court. The purpose of this Protective Order is to

1 facilitate the handling of nonpublic information of a confidential or
2 proprietary nature.

3 2. Standard for Protected Documents: Any person who is required
4 to produce documents or information in discovery in this litigation may
5 designate material produced as a protected document(s) pursuant to this
6 Protective Order. All designations must be based on the good faith
7 belief that the information constitutes (a) proprietary or sensitive
8 business, personal, or financial information; or (b) information subject
9 to a legally protected right of privacy.

10 3. Protected Documents: Protected document(s) are those documents
11 marked "CONFIDENTIAL" by any party. These documents, referred to
12 hereinafter as "protected documents," will be covered by this Protective
13 Order and will be used only for the purposes of this case, and will not
14 be used by any party or his or her counsel for any purpose unrelated to
15 this case. The parties agree that material concerning the healthcare of
16 Plaintiffs, whether physical or mental, produced in discovery or pursuant
17 to disclosure obligations under Federal Rule of Civil Procedure 26, shall
18 not be disseminated beyond attorneys and staff for the Defendant and
19 Defendant's potential experts, without the written consent of the
20 Plaintiffs, or order of the Court. No designation as "CONFIDENTIAL" is
21 required to protect these records.

22 4. Designating Protected Documents:

23 a. Marking Protected Documents: Protected documents shall
24 be designated as confidential by affixing to them the legend
25 "CONFIDENTIAL" in a size and location that makes the designation readily
26 apparent, preferably in the lower right hand corner.

1 b. Designating Deposition Testimony: Any party or non-party
2 wishing to designate deposition testimony or deposition exhibits as
3 confidential may do so on the record during the deposition, or within
4 thirty (30) days after receipt of the deposition transcript and exhibits
5 by providing written notice of the designation to the parties and any
6 other affected person. The party making the designation shall be
7 responsible for assuring that those portions of the deposition transcript
8 and exhibits designated as confidential are appropriately bound by the
9 reporter.

10 c. Subsequent Designation: A protected document or
11 deposition testimony produced or disclosed without a "CONFIDENTIAL"
12 designation may be subsequently designated by any party as confidential.
13 In each such case, the designating person shall provide to all other
14 parties written notice of that designation and a copy of the document
15 marked as "CONFIDENTIAL." No person shall be liable for publicly
16 disclosing a document marked "CONFIDENTIAL" if that disclosure occurred
17 prior to receipt of written notice pursuant to this paragraph.

18 5. Maintaining Designated Protected Documents: Any protected
19 document must be maintained in a manner reasonably calculated to preserve
20 its confidentiality.

21 6. Disclosure of Protected Documents:

22 a. Except as set forth herein or by any subsequent court
23 order, no protected documents shall be delivered, exhibited, or disclosed
24 to any persons unless done in a manner in compliance with this Protective
25 Order.

1 b. The parties' counsel shall require all persons, except
2 those referred to in paragraph 6(c), before being given access to any
3 protected document, to read and agree to be bound by this Protective
4 Order by endorsing the certification attached as Exhibit A. Counsel
5 shall retain this certification.

6 c. Protected documents may be delivered, exhibited, or
7 disclosed to the following persons subject to the limitations of this
8 Protective Order without being required to sign the certification
9 attached as Exhibit A:

10 (i) Counsel representing the named parties in this case
11 and any paralegal, clerical, or other employee of such counsel assisting
12 in the prosecution or defense of this litigation;

13 (ii) Any copying services hired by counsel to copy
14 documents in bulk;

15 (iii) The Court or any Court personnel;

16 (iv) Any person testifying or attending a deposition;

17 (v) Any person identified as having authored or having
18 previously received the protected document(s);

19 (vi) The parties and their client representatives,
20 insurance carriers, and/or counsel for their insurance carriers for any
21 purpose in this litigation; and

22 d. This Protective Order does not apply to information
23 obtained by or made available to any such person by means other than the
24 discovery provisions of the Federal Rules of Civil Procedure. Except for
25 good cause shown, protected materials need not be filed under seal when
26 submitted to the Court.

1 7. Producing Party's Use of Protected Documents: Nothing in this
2 Protective Order limits a producing party's use of its own documents or
3 documents obtained through means other than discovery requests or
4 subpoenas in this litigation. Such disclosures shall not affect any
5 confidential designation made under the terms of this Protective Order.

6 8. Disputes as to Confidentiality Designation:

7 a. Meet and Confer Requirement: If, at any time, a party
8 disagrees with the designation of a protected document, the parties must
9 first attempt to resolve the dispute by conferring.

10 b. Protective Order: If the dispute is not resolved through
11 the meet-and-confer process within fifteen (15) days of notification of
12 the receiving party's disagreement with the designation, the producing
13 party will have thirty (30) days to move the Court for protection under
14 the Federal Rules of Civil Procedure. The parties may, however, agree
15 to extend this period in order to bring any disputes about designations
16 of protected documents to the Court either at one time or in as efficient
17 a manner as possible.

18 c. Status Pending Resolution of Dispute: Any disputed
19 document or deposition testimony or other material must be treated as a
20 protected document under this Protective Order until entry of an order
21 ruling otherwise.

22 9. Rights of Parties: This Protective Order is without prejudice
23 to the right of any party to apply to the Court for any further
24 protective order relating to any confidential information or for an order
25 permitting disclosure of any confidential information beyond the terms
26 of this Protective Order.

1 10. Documents for Trial: After the pretrial conference, at the
2 request of either party, the parties will confer to reach an agreement
3 as to a method for maintaining the confidentiality of such information
4 and documents at trial. At the producing party's request, any document
5 previously designated confidential must be used at trial only in a clean
6 or redacted copy without any such designation.

7 11. Upon Case Completion: When this action, including entry of
8 judgment or appeal, concludes and within sixty (60) days after the
9 litigation has been finally terminated, a producing party may request the
10 return or destruction of all protected documents produced in this
11 litigation, except those filed with the Court or agreed by the parties
12 to be retained for purposes of effectuating any judgment. In addition,
13 counsel may maintain a copy in its own files which shall not be available
14 to any party or person and which shall not be used for any purpose other
15 than to defend against claims made against counsel. If such a request
16 is made in writing, the recipient of the request will have sixty (60)
17 days in which to (a) return the documents, (b) destroy the documents, or
18 (c) file a motion with the Court seeking an order upon good cause shown
19 that documents should not be destroyed or returned. Even if there is no
20 request to return the documents within the sixty (60) days, the protected
21 documents are still subject to the Protective Order with special
22 attention to paragraph 1.

23 12. Commencement: Counsel will abide by the terms of this
24 Stipulated Protective Order once it has been signed by counsel,
25 regardless of when this Order is signed by the Court.

